

LAURA E. DUFFY
 United States Attorney
 PAUL L. STARITA
 Assistant U.S. Attorney
 State of California Bar No. 219573
 880 Front Street, Room 6293
 San Diego, CA 92101-8893
 Telephone: (619) 546-7701
 Email: paul.starita@usdoj.gov
 Attorneys for Defendants
 Vicky Martinez, H. ED., and
 North County Health Services (NHCS) Ramona

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

TERESSA PALOZZI, an individual

Plaintiff,

v.

VICKY MARTINEZ, H. ED., an
 individual, and NORTH COUNTY
 HEALTH SERVICES (NCHS)
 RAMONA, and DOES 1-20,

Defendants.

Case No.: **'14CV0794 JM BGS**

**NOTICE OF REMOVAL OF A CIVIL
 ACTION**

[42 U.S.C. § 233 (c) 28 U.S.C. §§ 1442
 and 2679(d)(2)]

(Removed from Superior Court of
 California, County of San Diego, Case No.
 37-2013-00071557-CU-MM-CTL)

TO: THE CLERK OF THE ABOVE-ENTITLED COURT

PLEASE TAKE NOTICE that the United States of America, as the party which
 has been substituted in this action for Vicky Martinez, H. ED., and North County Health
 Services (NHCS) Ramona, through its attorneys, Laura E. Duffy, United States Attorney,
 and Paul L. Starita, Assistant U.S. Attorney, respectfully removes to this Court the above-
 captioned civil action from the Superior Court of California, County of San Diego, Case
 No. 37-2013-00071557-CU-MM-CTL. The grounds for this removal include the
 following:

1. On or about October 16, 2013, plaintiff initiated this action as Case No. 37-
 2013-00071557-CU-MM-CTL in the Superior Court of California, County of San Diego.
 Plaintiff named as a defendant North County Health Services (NHCS) Ramona, a

1 federally supported health center. Plaintiff also named as a defendant Vicky Martinez, H.
2 ED., a prenatal coordinator at the health center. The complaint alleges claims for medical
3 negligence against Vicky Martinez, H. Ed., and North County Health Services (NCHS)
4 Ramona. Exhibit A, p. 5.

5 2. Pursuant to the Federally Supported Health Centers Assistance Act, 42
6 U.S.C. §§ 233(g) - (n), as amended, the Secretary of Health and Human Services has
7 deemed Vicky Martinez, H. Ed., and North County Health Services (NCHS) Ramona to
8 be employees of the Public Health Service for purposes of the Federal Tort Claims Act
9 only, effective January 1, 2013. The United States Attorney for the Southern District of
10 California, through her designate, has certified that Vicky Martinez, H. Ed., and North
11 County Health Services (NCHS) Ramona were acting within the scope of employment at
12 the time of the incidents alleged in the complaint, and that pursuant to 42 U.S.C. §
13 233(g), Vicky Martinez, H. Ed., and North County Health Services (NCHS) Ramona are
14 deemed to be employees of the United States for Federal Tort Claims Act purposes only,
15 for any acts or omissions alleged against it in the complaint, which occurred on or after
16 January 1, 2013. A copy of the certification has been filed as an attachment to this
17 Notice.

18 3. The United States Attorney for the Southern District of California, through
19 her designate, has certified, pursuant to 28 U.S.C. § 2679(d), as amended, that Vicky
20 Martinez, H. Ed., was acting within the scope of her employment at North County Health
21 Services (NCHS) Ramona with respect to the events giving rise to the complaint, which
22 occurred on or after January 1, 2103. A copy of the certification has been filed as an
23 attachment to this Notice. Because the claims against Vicky Martinez, H. Ed., arise
24 within the scope of her official duties as an employee of North County Health Services
25 (NCHS) Ramona, she has been deemed to be an employee of the Public Health Service
26 pursuant to the Federally Supported Health Centers Assistance Act. For purposes of
27 liability, the torts alleged in the complaint against Vicky Martinez, H. Ed., and North
28 County Health Services (NCHS) Ramona are deemed to have been brought against the

1 United States under the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et*
2 *seq.* (“FTCA”). See 42 U.S.C. § 233(c).^{1/} Plaintiff’s remedy against the United States is
3 exclusive of any other civil action or proceeding involving the same subject matter and
4 claims against Vicky Martinez, H. Ed., and North County Health Services (NCHS)
5 Ramona, based on acts or omissions which occurred on or after January 1, 2013. 42
6 U.S.C. §§ 233(a) and (g).

7 4. This action may be removed to this court, without bond, under 28 U.S.C.
8 § 2679(d)(2), as amended, because this judicial district embraces the place in which the
9 above-captioned civil action is pending. Further, because of the aforementioned
10 certification, the suit against Vicky Martinez, H. Ed., henceforth shall be deemed an
11 action brought against the United States under the provisions of the FTCA; and the
12 United States shall be substituted as the party defendant. Id. The action also is
13 removable pursuant to 42 U.S.C. § 233(c) of the Federally Supported Health Centers
14 Assistance Act.

15 5. 28 U.S.C. § 1442 also provides another basis for removal because, by
16 operation of law, both Vicky Martinez, H. Ed., and North County Health Services
17 (NCHS) Ramona are deemed to be employees of an agency of the United States of
18 America. Federal defenses to the complaint therefore include, but are not limited to: (i)
19 lack of subject matter jurisdiction; (ii) sovereign immunity; and (iii) failure to state a
20 claim.

21 6. The above-captioned action also may be removed under 28 U.S.C. §§
22 1441(a) and (b) because the district courts of the United States have original jurisdiction
23

24
25 ^{1/} The Secretary of Health and Human Services deemed Vicky Martinez, H.
26 Ed., and North County Health Services (NCHS) Ramona to be employees of the Public
27 Health Service for purposes of the Federal Tort Claims Act only, effective January 1,
28 2013. Any acts or omissions of Vicky Martinez, H. Ed., or North County Health Services
(NCHS) Ramona that occurred prior to January 1, 2013, are not covered by the Federal
Tort Claims Act.

over cases which arise under the Constitution, treaties or laws of the United States. 28 U.S.C. § 1331.

7. As of this time, neither the summons nor complaint in the above-captioned civil action has been served on the United States Attorney for the Southern District of California or the Attorney General of the United States.

8. Copies of the summons and complaint filed in the Superior Court of California, County of San Diego, Case No. 37-2013-00071557-CU-MM-CTL are attached pursuant to 28 U.S.C. § 1446(a), as amended. See Exhibit A.

WHEREFORE, Case No. 37-2013-00071557-CU-MM-CTL, now pending in the Superior Court of California, County of San Diego, is removed therefrom to this Court.

DATED: April 4, 2014

LAURA E. DUFFY
United States Attorney

s/ Paul L. Starita
PAUL L. STARITA
Assistant U.S. Attorney
Attorneys for Defendants
United States of America,
Vicky Martinez, H. ED., and
North County Health Services
(NHCS) Ramona